IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 6337 of 2004(D)

AGAINST THE ORDER IN IA.505/04 IN
OS.94/2003 of ADDL.MUNSIFF, KASARAGOD

.....

PETITIONER:

N.K.RAMANI, AGED 43 YEARS, W/O. BALAN,
RESIDING AT CHEMBIRIKA, KALANAD VILLAGE,
POST CHANDRAGIRI, KASARAGOD DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS:

---

1. CHEMBIRIKA MOOSA, AGED 75 YEARS, (DIED)
S/O. AHAMMADKUTTY, RESIDING AT CHEMBIRIKA,
KALANAD VILLAGE, POST CHANDRAGIRI,
KASARAGOD DISTRICT.

***ADDL.R2 TO R10 IMPLEADED**

2. KANGIBI, W/O.LATE MOOSA, RESIDING AT CHEMBIRIKA, KALANAD VILLAGE, POST CHANDRAGIRI, KASARGOD DISTRICT.

3. KUNHIBI, AGED 45 YEARS, D/O.LATE MOOSA, RESIDING AT CHEMBIRIKA, KALANAD VILLAGE, POST CHANDRAGKRI, KASARAGOD DIST.

4. ANTHAJI, AGED 40 YEARS, S/O.LATE MOOSA, RESIDING AT CHEMBIRIKA, KALANAD VILLAGE, POST CHANDRAGIRI, KASARAGOD DISTRICT.

5. SAFFIA, AGED 38 YEARS, D/O.LATE MOOSA, RESIDING AT CHEMBIRIKA, KALANAD VILLAGE, POST CHANDRAGIRI, KASARAGOD DISTRICT.

6. KHALID, AGED 36 YEARS, S/O.LATE MOOSA, RESIDING AT CHEMBIRIKA, KALANAD VILLAGE, POST CHANDRAGIRI, KASARGOD DISTRICT.

7. JAFER, AGED 30 YEARS, S/O.LATE MOOSA, RESIDING AT CHEMBIRIKA, KALANAD VILLAGE, POST CHANDRAGIRI, KASARGOD DISTRICT.

8. RAMLA, AGED 28 YEARS, D/O.LATE MOOSA, RESIDING AT CHEMBIRIKA, KALANAD VILLAGE, POST CHANDRAGIRI, KASARAGOD DISTRICT.

9. ABEEDA, AGED 26 YEARS, D/O.LATE MOOSA, RESIDING AT CHEMBIRIKA, KALANAD VILLAGE, POST CHANDRAGIRI, KASARGOD DISTRICT.

1O.SAYYED, AGED 24 YEARS, S/O.LATE MOOSA, RESIDING AT CHEMBIRIKA, KALANAD VILLAGE, POST CHANDRAGIRI, KASARAGOD DISTRICT.

*ADDL.R2 TO R10 ARE IMPLEADED AS PER THE ORDER IN I.A.NO. 16903/04 DATED 15.6.07.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 6337/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE ORDER DATED 12.2.2004 IN I.A.505/04 IN O.S.NO.94/03 ON THE FILE OF THE MUNSIFF'S COURT, KASARAGOD.

EXT.P2: TRUE COPY OF THE PLAINT IN O.S.NO.94/03 ON THE FILE OF THE MUNSIFF'S COURT, KASARGOD.

EXT.P3: TRUE COPY OF I.A.505/04 ON THE FILE OF THE MUNSIFF'S COURT, KASARGOD.

PIUS C. KURIAKOSE,J.

- -

W.P.(C) No.6337 of 2004

- -

Dated: 15th June, 2007

JUDGMENT

An application for amendment of the plaint in a suit for injunction was dismissed by the learned Munsiff by passing Ext.P1 order. The suit before amendment and after the proposed amendment will continue to be one for injunction only, i.e. regarding a pathway. In paragraph 4 of the unamended original plaint which is produced as Ext.P2 the petitioner-plaintiff has stated as follows:

"The Road was in existence for the last more than thirty years being enjoyed by the residents including the plaintiff, her predecessor in interest and other residents of the locality including school going children."

Thereafter in paragraph 5 of Ext.P2 it is further stated as follows:

"The plaintiff has perfected her right, user and enjoyment of the Road by long user by herself, and her predecessor in interest for a very long time. The defendant has not manner of right, title to or interest over any portion of the A schedule property or the said Road passing on the west of Plaint A schedule property or its enjoyment by the plaintiff."

In paragraph 6 also the plaintiff alleges that the defendant is

attempting to interfere with "the safe passage, user and enjoyment of the road". Ext.P3 is copy of the amendment application which seeks incorporation of a few sentence in para 5 of the plaint and it significantly does not seek any amendment of the relief portion in the plaint. The following is the paragraph sought to be incorporated:

"The plaintiff has been using and enjoying the Road passing through RS No.129/1T of Kalanad village on the west of Plaint A Schedule property claiming title thereto as of right, openly, peacefully, uninterruptedly for the last more than thirty years and that she has perfected her right to user and enjoyment of the Road by way of Easement by prescription".

The learned Munsiff has dismissed the amendment application on the reason that by allowing the amendment the character of the suit will change. I cannot agree. The suit will continue to be a suit for injunction. But perhaps the right upon which the plaintiff claims the relief will to a certain extent be expatiated by contending that it is an easement by prescription. Going by the original pleadings the necessary foundation for a claim for easement is laid at least in a rudimentary way though it is true that the word 'easement' is not used. I do not know how any legal prejudice will be occasioned to the

respondent by allowing the amendment application. The amendment application should have been allowed by the Munsiff. Considering the inconvenience caused to the parties and the court cost could have been imposed on the petitioner.

2. The result of the above discussion is that the impugned order is set aside and I.A.No.505/04 will stand allowed. The court below will grant opportunity to the respondent to file additional written statement and will formulate issues on the basis of the additional written statement and dispose of the suit in accordance with law. The above order is on condition that the petitioner will pay a sum of Rs.500/- to the Kerala High Court Legal Services Committee within three weeks from today. If payment is not made as above, the I.A. and the Writ Petition will stand dismissed.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**